

REMARKS

In response to the Examiner's comments, claims 5-7 and 12-19 are cancelled, and claims 1, 3, and 8-11 are amended. Accordingly, claims 1-4, and 8-11 are currently pending.

I. Formal Matters

A. Cancellation of Non-elected Claims. Claims 5, 13-17, and 19 were withdrawn by the Examiner has drawn to non-elected subject matter. Accordingly, claims 5, 13-17, and 19 are cancelled without prejudice to their presentation in a subsequently filed divisional application.

B. Priority. The Examiner stated that none of the priority applications for USSN 09/031,693 were listed within the first sentence of the specification. Applicants submit that the stated priority claim is correct because Applicants do not rely on subject matter disclosed prior to the USSN 09/031,693 application. Accordingly, this objection should be withdrawn.

C. Double Patenting. Claims 1-4, 6 -12, 18 and 20 -22 were provisionally rejected under the judicially created doctrine of obvious-type double patenting over claims 1-4, 7 and 11 of co- pending Application No. 09/454,380. Applicants agree to file a terminal disclaimer upon indication of allowable claims.

II. Claim Rejections Under 35 USC § 112, first paragraph

Claims 3, 7-12, and 18 were rejected on the basis that, while the specification is "enabling for a method of reducing body weight/fat and food intake in obese mammals while attenuating obesity associated hyperinsulinemia/reducing diet-restricted plasma insulin levels following administration of" Ax-15, "it does not reasonably provide enablement for the treatment of diabetes in general."

In response, claim 3 is amended as suggested by the Examiner, to clarify that the excess weight is due to diet induced obesity. Claims 7 and 18 are cancelled.

In light of the above remarks and amendments, it is believed that this rejection may now be withdrawn.

III. Claim Rejections Under 35 USC § 112, second paragraph.

USSN 09/577,468

Amendment dated 30 June 2003

Claims 8-11 and 13 were rejected as dependent on cancelled or non-elected claims. Claims 8-11 are amended to correct dependency and claim 13 is cancelled. Accordingly, this rejection may now be withdrawn.

IV. Claim Rejection § 35 USC 102(f)

The Examiner repeated the rejection of claims 1-4, 6-12, 18 and 20 - 22 under 35 USC 102(f) on the basis that the three inventors of the instant application are entirely different from the three inventors in Application No. 09/454,380, who "also claim treating obesity and diabetes with Ax-15."

The current claims are drawn to a method of inducing weight loss in a mammal by nasal or respiratory administration of the modified CNTF of SEQ ID NO:16 or 17. The co-inventors are Drs. Wong, Koehler-Stec, and Stahl.

By contrast, USSN 09/454,380 is drawn to a method of treating non-insulin dependent diabetes mellitus (NIDDM) in a mammal by administering Ax-15, optionally pegylated, and a carrier, such that NIDDM is treated. The inventive entity of the USSN 09/454,380 application are Drs. Wiegand, Sleeman, and Lambert and does not disclose the embodiment of nasal or respiratory administration of Ax-1 to achieve weight loss. In light of these remarks, Applicants submit that this rejection should be withdrawn.

Conclusion

In light of the above amendments and remarks, it is believed that the claims are now in condition for allowance, and such action is respectfully urged.

Petition for One-Month Extension of Time

A response to Advisory Action was due on June 30, 2003. Applicants respectfully request a one month extension of time to respond from June 30, 2003, to and including July 31, 2003. With a

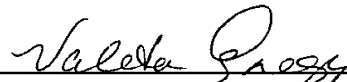
USSN 09/577,468

Amendment dated 30 June 2003

one-month extension of time, a response is now due July 31, 2003, and, therefore, this response is being timely filed. The Commissioner is hereby authorized to charge the required fee of \$110.00 to Deposit Account 18-0650.

No additional fee is deemed necessary for filing this paper. However, if any additional fee should be deemed necessary, the Commission is hereby authorized to charge such additional fee to Deposit Account 18-0650.

Respectfully submitted



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